



**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

**CRA-D-59-DB-2018 (O&M)
Reserved on: 30.08.2024
Pronounced on:- 25.10.2024**

Dori Lal and another
.....Appellants

Vs.

State of Haryana
.....Respondent

**CORAM: HON'BLE MR. JUSTICE G.S. SANDHAWALIA
HON'BLE MS. JUSTICE HARPREET KAUR JEEWAN**

**Present: Mr. R.S. Dhull, Advocate,
for the appellants.**

Mr.Saurabh Mago, D.A.G., Haryana.

HARPREET KAUR JEEWAN, J.

1. Both the appellants have preferred the present Criminal Appeal assailing the finding of conviction recorded vide judgment dated 05.12.2017 and order of sentence dated 06.12.2017 passed by the Additional Sessions Judge, Faridabad, whereby appellant No. 1-Dori Lal has been convicted under Sections 376 (2) (i) & (n) of the Indian Penal Code, 1860 (for short '*the IPC*') and under Section 6 of the Protection of Children from Sexual Offences Act, 2012 (for short '*the Act of 2012*') and appellant No. 2-Meenu has been convicted for abetment under Section 17 of the Act of 2012, in case FIR No. 84, dated 09.06.2016, registered at Women Police Station, District Faridabad under Sections 506 of the IPC and Sections 6 and 18 of the Act of 2012. Both the appellants have been

sentenced as under:-

Appellant No. 1-Dori Lal

Under Sections	Rigorous imprisonment	Fine	In default of payment of fine
376 (2) (i) & (n) of the IPC/6 of the Act of 2012	12 (twelve) years	Rs. 15,000/-	One month
506 IPC	2 (two years)	Rs. 5,000/-	15 days

Appellant No. 2-Meenu

Under Section	Rigorous imprisonment	Fine	In default of payment of fine
17 of the Act of 2012	12 (twelve) years	Rs. 15,000/-	One month

2. As per the prosecution case appellants Dori Lal and Meenu were residing as tenants for about 06 years in the house of Sabina Bano (PW-5). Both the appellants brought the prosecutrix aged about 13 years from her Village Pospu, situated in Assam to Faridabad. Appellant No.2-Meenu did not allow the prosecutrix to talk to the land-lady. However, on 09.06.2016 when both the appellants were away from their house, the prosecutrix confided to the land-lady Sabina Bano (PW-5) and disclosed her that appellant No. 1-Dori Lal used to commit rape upon her forcibly. It was further disclosed that appellant No. 1-Dori Lal was repeatedly committing

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rape on the prosecutrix immediately after she was brought from her village. The prosecutrix disclosed about the said occurrence to appellant No.2-Meenu, but she did not pay any heed and she told the prosecutrix to remain mum.

2.1 On 09.06.2019, the prosecutrix along with her land-lady Sabina Bano came to the police station and reported the matter to the police, as such, and the First Information Report was registered against both the appellants. Investigation was carried out, and the statement of the prosecutrix under Section 164 of the Code of Criminal Procedure, 1973 (for short '*the Cr.P.C*') was recorded and her medical examination was got conducted. Both the appellants were arrested and after completion of the investigation, the final report/'*challan*' under the provisions of Section 173 Cr.P.C. was presented to the trial Court.

2.2 After supplying the copies of the final report/'*challan*' under Section 173 of the Cr.P.C. to the appellants, the case was committed to the Sessions Court, vide order dated 10.06.2016 and charges under Sections 376 (2) and 506 of the IPC and Section 6 of the Act of 2012 were framed against appellant No. 1-Dori Lal and Section 17 of the Act of 2012 against appellant No. 2-Meenu, vide order dated 22.09.2016 to which they pleaded not guilty and claimed trial.

2.3 Prosecution examined total 13 witnesses to prove its case. Prosecutrix appeared as PW-1. Dr. Shilpi Monga, who conducted the medico legal examination of the prosecutrix appeared as PW-2. Sharwan Kumar Draftsman, who prepared the scaled site plan (Ex. PD) appeared as PW-3. Dr. Sadan Parshad appeared as PW-4 and stated about the medico legal examination of appellant No.1-Dori Lal. Smt. Sabina Bano, landlady

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of the house where the appellants were residing appeared as PW-5. Dr. Ashish Tyagi (PW-6) was the member of the Medical Board, who conducted the physical, dental and radiological examination of the prosecutrix and gave the opinion about the age of the prosecutrix as between 13 to 15 years. PSI Savita, the investigating officer, appeared as PW-7 and stated about the registration of the FIR and narrated about the details of the investigation conducted by her. Lady Constables, Barfi, Shakuntala and Ritu, who were the official witnesses, appeared as PW-8, PW-9 and PW-10 respectively. ASI Sharmila appeared as PW-11 and tendered her affidavit as Ex. PW11/A. Inspector Sushil appeared as PW-12 and deposed regarding the completion of the investigation and filing of the final report/‘*challan*’. Constable Sharmila appeared as PW-13 and deposed about taking the appointment of the ossification test of the prosecutrix.

2.4 Statements of the accused under the provisions of Section 313 Cr.P.C. were recorded wherein they denied all the incriminating evidence put to them and alleged false implication.

2.5 After recording the evidence led by the prosecution, the trial Court framed following points for determination:-

- (i) Whether the prosecutrix is a minor?
- (ii) Whether on 09.06.2016 and prior to that accused Dori Lal had committed Aggravated Penetrative Sexual Assault/rape repeatedly with the minor prosecutrix without her consent?
- (iii) Whether prior to 09.06.2016 accused Dori Lal had criminally intimidated the minor prosecutrix to kill her?
- (iv) Whether accused Meenu had abetted accused Dori Lal in commission of Aggravated Penetrative Sexual Assault upon the

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prosecutrix?

2.6 While relying upon the oral testimony of Dr. Ashish Tyagi (PW-6) and the opinion given by the Board of doctors in the report Ex. PG, the trial Court concluded that at the time of alleged occurrence, the age of the prosecutrix was between 13-15 years.

2.7 While relying upon the testimony of the prosecutrix (PW-1) and the testimony of the land-lady, who appeared as PW-5, as well as the medical evidence proved by Dr. Shilpi Monga (PW-2), the trial Court concluded that appellant No. 1-Dori Lal had committed the offence of Aggravated Penetrative Sexual Assault with the prosecutrix. The defence version was disbelieved that PW-5, Sabina Bano got registered the present FIR as she wanted to get her house vacated.

3. Learned counsel for the appellant submits that the prosecution story is highly improbable, as much as that the appellant Meenu would not have ignored in case the alleged occurrence would have occurred in the manner as propounded by the prosecutrix. It is further contended that PW-5 Sabina Bano, being an interested witness instigated the prosecutrix to depose against the appellants as she wanted to get her rented portion vacated from the appellants. Referring to the medical examination, it was submitted that no injury marks were found on the person of the prosecutrix as such, the allegations that appellant No. 1-Dori Lal had been repeatedly committing forcible rape with her is highly improbable. It was further submitted that there are many contradictions in the statements of the prosecution witnesses, as such, the findings of conviction recorded by the trial Court are liable to be set aside.



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4. On the other hand, learned State counsel has supported the findings recorded by the trial Court and submits that the judgment passed by the trial Court is well-reasoned and is not liable to be set aside.

5. We have considered the aforesaid contentions and perused the paper-book.

AGE OF THE PROSECUTRIX

6. The trial Court has recorded the findings of the age of the prosecutrix as between 13 to 15 years while relying upon the ossification test conducted by the Board of doctors. Keeping in view the deposition of Dr. Ashish Tyagi (PW-6), who was a member of the Board and gave detailed report (Ex. PG), there is nothing on record to disbelieve the said findings. Even the prosecutrix, when she appeared as PW-1, was not given any such suggestion to contradict her age. As such, the said findings require no interference.

APPRECIATION OF OCCULAR AND MEDICAL EVIDENCE REGARDING THE CHARGE UNDER SECTION 376(2) OF THE IPC AND SECTION 6 OF THE ACT OF 2012

7. The trial Court has believed the testimony of the prosecutrix regarding the allegations against appellant No. 1-Dori Lal that he had repeatedly been committing rape upon her. As per the testimony of the prosecutrix, her parents are no more. She is having two brothers and two sisters who were residing in Assam. Appellant No. 2-Meenu belongs to her native village who came in her village and assured the prosecutrix, as well as her family members that she would provide good education and a job to her. On the said assertions, the prosecutrix was brought to Faridabad. The prosecutrix has detailed about her exploitation and categorically stated that both the accused used to perform sex in her presence by showing her all the

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sexual acts. Appellant No. 1-Dori Lal used to commit rape upon her against her wishes and sometimes in the presence of appellant No. 2-Meenu. She made complaints to appellant No. 2-Meenu various times but she did not take care rather warned her to keep mum and allowed the accused-appellant No. 1-Dori Lal to continue with the said sexual abuse. Thereafter, she narrated the incident to the land-lady Sabina Bano (PW-5) who rescued her from the clutches of the accused through the police. As per the cross-examination of the prosecutrix, she used to cook food and serve the same to both the accused. She also used to do all house-hold work. She remained with both the appellants for a period of 6 months. Both the accused used to insult her and exploit her and they also used to beat her. She has further stated that another family used to reside on the ground floor and head of the said family was Raja, who was having two children. Similar is the statement of Sabina Bano (PW-5) who stated that the prosecutrix disclosed to her about the aforesaid occurrence and she along with the prosecutrix reported the matter to the police. Even she has stated in her cross-examination that her house is double-story consisting of four rooms. Two rooms are on the ground floor and two rooms are on the first floor. Appellants used to reside on the first floor in one room and second room was empty at that time.

8. As per the medical evidence proved by Dr. Shilpi Monga (PW-2), on 10.10.2016, she had medico-legally examined the prosecutrix. The patient gave alleged history of sexual assault since two months till 07.06.2016. As per the medico-legal report (Annexure PC), on examination the observations have been recorded that hymen was found torn with healed irregular margin and the opinion was given that possibility of sexual



intercourse cannot be ruled out.

9. After evaluating the ocular version of the prosecutrix and the medical evidence, it is concluded that there is substantial evidence on record to prove that appellant No. 1-Dori Lal had committed the offence of “Penetrative Sexual Assault” as defined under Section 3 of the Act of 2012, which reads as under:-,

“Penetrative sexual assault- A person is said to commit “penetrative sexual assault” if-

- (a) He penetrates his penis, to any extent, into the vagina, mouth, urethra or anus of a child or makes the child to do so with him or any other person; or*
- (b) He inserts to any extent, any object or a part of the body, not being the penis, into the vagina, the urethra or anus of the child or makes the child to do so with him or any other persons; or*
- (c) He manipulates any part of the body of the child as as to cause penetration into the vagina, urethra, anus or any part of the body of the child or makes the child to do so with him or any other person; or*
- (d) He applies his mouth to the penis, vagina, anus, urethra of the child or makes the child to do so to such person or any other person.”*

10. Since the sexual assault was repeatedly committed upon the child-victim, as such, appellant No. 1-Dori Lal is proved to have committed the offence of “Aggravated Sexual Assault”, in view of the provisions of sub-Section (1) of Section 5 of the Act of 2012, which reads as under:-

“5. Aggravated penetrative sexual assault-(a) whoever, being a police, officer,

XXXX XXXX XXXX XXXX

(1) Whoever commits penetrative sexual



assault on the child more than once or repeatedly; or

XXXX XXXX XXXX XXXX

11. The offence of “Penetrative Sexual Assault” is punishable under Section 6 of the Act of 2012, as such, the findings arrived at by the trial Court that appellant No. 1-Dori Lal is guilty under Section 6 of the Act of 2012 requires no interference.
12. In view of the definition of the provisions of sub-section (2) (i) & (n) of Section 376 IPC, the findings recorded by the trial Court alternatively also convicting appellant No. 1-Dori Lal thereunder are factually correct and in resonance with the evidence on record.
13. We have also scanned the testimony of the prosecutrix with regard to the allegations against appellant No. 2-Meenu. Considering the fact that both the appellants were residing in a single room on the first floor of the house and there were other residents on the ground floor as well, the testimony of the prosecutrix that sometimes appellant No. 1-Dori Lal used to commit rape with her even in the presence of appellant No. 2-Meenu is highly improbable. The victim was of the tender age at the time of occurrence, as per her statement recorded under Section 164 Cr.P.C. (Ex. PB), She was brought from her house by appellant No. 2-Meenu on the pretext that she would be paid for working in her house. The victim has alleged that she had to do the whole household works at the instance of appellant No. 2-Meenu and even she used to beat her and sometimes she was not given any food to eat. Appellant No. 2-Meenu used to threaten her when she disclosed about the sexual abuse at the instance of her husband.
14. The evidence transpires that the victim was brought from Assam to Faridabad by appellant No. 2-Meenu. The victim was a child of tender age,



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who was forced to do the whole household work. She was being sexually abused by appellant No. 1-Dori Lal. Even the child-victim used to be kept hungry sometimes. Such circumstances give a strong indication that the child-victim was aggrieved with appellant No. 2-Meenu on the account that she had brought her from Assam to that place and she was responsible for her miseries. However, it is highly improbable that accused No. 1-Dori Lal used to commit “Aggravated Sexual Assault” upon the prosecutrix in the presence of his wife, i.e. appellant No. 2-Meenu.

15. In view of the aforesaid reasons, the findings arrived at by the trial Court holding the co-accused (appellant No. 2-Meenu) guilty of offence of abetment to commit “Aggravated Penetrative Sexual Assault” are not sustainable. The Courts have to separate the grain from the chaff. The statement of the prosecutrix cannot be discarded merely, on the ground that a part of her statement is found improbable. As such, we are of the considered opinion that the conviction of appellant No. 2-Meenu recorded by the trial Court under Section 17 of the Act of 2012 is not sustainable as the prosecution has failed to prove the said offence beyond shadow of doubt.

16. We have also considered the testimony of the prosecutrix. She has not stated anything to prove the charge under Section 506 IPC against appellant No. 1-Dori Lal, as such, the conviction of appellant No. 1-Dori Lal is also not sustainable and is liable to be set aside.

17. Keeping in view the observations recorded hereinabove, the present appeal is partly allowed. The judgment of conviction dated 05.12.2017 holding appellant No.1-Dori Lal guilty under Section 6 of the Act of 2012 is upheld. However, the findings holding appellant No. 1-Dori Lal guilty

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under Section 506 IPC and appellant No. 2-Meenu under Section 17 of the Act of 2012 is set aside.

18. We have also considered the legality of the order of sentence qua appellant No. 1-Dori Lal. Appellant No. 1-Dori Lal has been convicted for 12 years rigorous imprisonment and further ordered a fine of Rs. 15,000/- under Section 6 of the Act of 2012 and alternatively under Section 376 (2) (i) & (n) IPC. As per the custody certificate, appellant No. 1-Dori Lal had already undergone actual period of 07 years, 07 months and 08 days custody. As per the provisions of Section 6 of the Act of 2012 prior to the amendment by Act 25 of 2019 (which was applicable w.e.f. 16.08.2019), the minimum punishment for the offence of ‘Aggravated Penetrative Sexual Assault’ was 10 years rigorous imprisonment which may extend to imprisonment for life. Considering the custody period of appellant No. 1-Dori Lal, his age and the fact that he has never been on parole and is continuously in custody for a period of 07 years and 07 months, we deem it fit to award the rigorous imprisonment for a period of 10 years and to pay the fine of Rs. 15,000/- as awarded by the trial Court and in default thereof, to further undergo rigorous imprisonment for a period of one month.

19. With the aforesaid modification in the judgment of conviction and order of sentence, the present appeal stands disposed of.

20. Before parting with this judgment, it is observed that the board of doctors who conducted medical examination of the child-victim for her age determination have got affixed the photograph of the prosecutrix on the report Ex. PG. The said report is signed by four doctors, including PW-6, Dr. Ashish Tyagi. Affixing of photograph of the Child Victim is not in the “best interest of the child.” It is rather violative of “Principles to Right to



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Privacy and Confidentiality” which every child has. As per the objectives contained in the Juvenile Justice (Care and Protection of Children), Act 2015, (for short ‘*the Act of 2015*’), “The Principles of Best Interest” and “Principles to Right to Privacy and Confidentiality” are to be followed by all the agencies while implementing the provisions of the Act and such are the fundamental principles which guide such agencies who are dealing with a Child in Need of Care and Protection (CNCP), as well as a Child in Conflict with Law (CCL).

21. Section 37 of the Act of 2012 even provides that trial is to be conducted in camera by the Special Court. Apart from this, it also provides that wherever the Special Court is of the opinion that the child needs to be examined at a place other than the Court, the Court can even proceed to issue a Commission in accordance with the provisions of Section 284 of the Code of Criminal Procedure, 1973.

22. In view of the aforesaid provisions contained in the Act of 2015 and in view of the fact that the identity of the Child-Victim is not to be disclosed, affixing of such photographs on the medical examination performa of the child victim should be discontinued.

23. A copy of this judgment be forwarded to the Principle Secretaries of the Department of Health in the States of Punjab and Haryana and U.T., Chandigarh through the Registrar General of this Court for information and ensuring such compliance. The Children Courts shall also ensure that identity of a Child-Victim be protected by ensuring that photographs of a victim on the medical examination reports are not affixed. As such, a copy of this judgment be also forwarded to all the Children Courts in the States of Punjab and Haryana and U.T., Chandigarh through the Registrar General

of this Court for necessary compliance.

24. Pending miscellaneous applications, if any, also stand disposed of.

(G.S. SANDHAWALIA)	(HARPREET KAUR JEEWAN)
JUDGE	JUDGE
October 25, 2024	
nitin	Whether Speaking Yes
	Whether Reportable Yes